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Filing date: **12/29/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215657
Party	Plaintiff Goya Foods, Inc.
Correspondence Address	STEPHEN L BAKER BAKER AND RANNELLS PA 92 E. Main St., Suite 302 SOMERVILLE, NJ 08876 UNITED STATES officeactions@br-tmlaw.com, k.hnasko@br-tmlaw.com, jld@br-tmlaw.com
Submission	Motion for Sanctions
Filer's Name	Jason DeFrancesco
Filer's e-mail	jld@br-tmlaw.com, k.hnasko@br-tmlaw.com
Signature	/Jason DeFrancesco/
Date	12/29/2015
Attachments	Motion for Sanctions.pdf(1856584 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Goya Foods, Inc.,	:	Opposition No. 91215657
	:	
Opposer,	:	
v.	:	
	:	
Goyogo Frozen Yogurt, LLC.,	:	
	:	
Applicant.	:	

**MOTION FOR SANCTIONS AND
SUSPENSION PENDING DISPOSITION OF MOTION**

On October 26, 2015, the Board entered its order compelling Applicant, Goyogo Frozen Yogurt, LLC., to “serve amended answers to Admission Request Nos. 18-23 to the extent that the requests are limited to frozen yogurt.” (Dkt. # 16, p. 6.)

Applicant timely served its amended answers to the Admissions Requests as directed, however, the Applicant improperly conditioned the amended responses to Request Nos. 18-23 based on terms being “further defined by Goya Foods in its May 27, 2015 letter.” (Attached as Exh. A is a true copy of Applicant’s Third Amended Response. See pp. 5-6.)

On December 11, 2015 the undersigned contacted counsel for Applicant highlighting the problems and or deficiencies with Applicant’s amended response because, first off, Applicant did not allege any definition provided by Goya in any letter when it opposed the motion testing the sufficiency of its admissions; second, the Board did not approve of a response conditioned on the May 27, 2015 letter; and finally, even if the Board did approve the conditional responses, which it did not, there are no terms “further defined by Goya in its May 27, 2015 letter” making

Applicant's response both unintelligible and non-responsive. (Attached as Exh. B is a true copy of the December 11, 2015 communication and includes the referenced May 27, 2015 letter.)

Suffice it to say, the Applicant's response does not correct the deficiencies, which is effectively a failure to comply with the Board's order that granted Opposer's motion to compel. In light of the fact that Opposer's testimony period is about to open, it is necessary to resolve this issue beforehand so the matter can be attended to timely. See Trademark Rule 2.120(e)(1), a motion to compel must be filed "prior to the commencement of the first testimony period as originally set or as reset" and, *inter alia*, *Chianti Ruffino Esportazione Vinicola Toscana S.p.A. v. Colli Spolenti Spoletoducale SCRL*, 59 USPQ2d 1383, 1383 (TTAB 2001) ("Any deficiencies in applicant's discovery responses should have been addressed by the timely filing of a properly-supported motion to compel discovery prior to the commencement of opposer's testimony period"). Notwithstanding, the underlying motion was filed before the testimony period has opened, so this motion is timely. Opposer further moves herein to suspend the proceedings pending decision on the instant motion.

As for the underlying sanctions:

The type of order contemplated as a prerequisite to a motion for sanctions under Trademark Rule 2.120(g)(1) is an order granting or denying a motion to compel. *Cf. M.C.I. Foods Inc. v. Bunte*, 86 USPQ2d 1044, 1048 (TTAB 2008) ("Because M.C.I. failed to comply with the Board's orders [granting motions to compel], sanctions are appropriate."), and *MHW Ltd. v. Simex, Aussenhandelsgesellschaft Savelsberg KG*, 59 USPQ2d 1477, 1478 (TTAB 2000) ("The law is clear that if a party fails to comply with an order of the Board relating to discovery, including an order compelling discovery, the Board may order appropriate sanctions as defined

in Trademark Rule 2.120(g)(1) and Fed. R. Civ. P. 37(b)(2), including entry of judgment [citations omitted].”). *See also, S. Industries Inc. v. Lamb-Weston Inc.*, 45 USPQ2d 1293, 1298 (TTAB 1997) (“In the event that petitioner fails to comply with this Board order compelling discovery, a formal motion for sanctions will be entertained by the Board. See Trademark Rule 2.120(g).”).

WHEREFORE, Opposer requests that proceedings be suspended upon which time appropriate sanctions in this case may be entered that include Admission Request Nos. 18-23 be deemed admitted in its entirety as originally presented and not subject to any qualifications, limitations and or restrictions as to the yogurt and the other goods identified in the requests.

Respectfully submitted,

Baker and Rannells, PA

Dated: December 29, 2015

By: /Jason DeFrancesco/
Jason DeFrancesco
92 E Main Street, No. 302
Somerville, NJ 08876
(908) 722-5640

Attorneys for the Opposer,
Goya Foods, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 29th day of December, 2015 to Applicant, at the following address,

Dennis F Gleason
Jardim Meisner & Susser Pc
30b Vreeland Rd Ste 201
Florham Park, NJ 07039

/Jason DeFrancesco/
Jason DeFrancesco

Exhibit A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial No. 86060111

For the mark: 

Filed September 10, 2013

In the Matter of Trademark Application Serial No. 86037364

**For the mark: GoYoGo Frozen Yogurt
Our Ingredients, Your Creation**

Filed August 14, 2013

GOYA FOODS, INC.,

Opposer,

v.

GOYOGO FROZEN YOGURT LLC,

Applicant.

Opposition No. 91215657

**THIRD AMENDED RESPONSES OF
APPLICANT TO FIRST REQUESTS FOR
ADMISSION BY OPPOSER**

Pursuant to the Board's October 26, 2015 ruling, GoYoGo Frozen Yogurt, LLC ("GoYoGo Frozen Yogurt" or "Applicant") responds to the first request for admissions by Goya Food, Inc. ("Goya Foods" or "Opposer") as follows:

INSTRUCTIONS AND DEFINITIONS

GoYoGo Frozen Yogurt objects to all instructions and definitions that are contrary to the Federal Rules of Civil Procedure, Trademark Trial and Appeal Board and applicable authority.

REQUESTS FOR ADMISSION

1. Admit that Applicant has no registrations or pending applications to register the GOYOGO trademark other than the applications being opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as vague and ambiguous as the term “GOYOGO trademark” is undefined. Subject to the objections raised, Applicant is unable to respond.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya that “the GOYOGO trademark” refers to the two applications referenced in the opposition, the statement is admitted.

2. Admit that Applicant is not currently using the unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION on or in conjunction with the offer or sale of any Services within the United States.

RESPONSE: GoYoGo Frozen Yogurt objects to the term “unstylized” as vague and ambiguous and objects to the term “Services” as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term “unstylized” as vague and ambiguous. Based on the subsequent definition provided by counsel for Goya, subject to the objections raised, Applicant is unable to respond.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya, the statement is denied.

3. Admit that Applicant does not have a bona fide intent to use the unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION on or in conjunction with the offer or sale of any Services within the United States.

RESPONSE: GoYoGo Frozen Yogurt objects to the term “unstylized” as vague and ambiguous and object to the term “Services” as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term “unstylized” as vague and ambiguous. Based on the subsequent definition provided by counsel for Goya, subject to the objection raised, Applicant is unable to respond.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya, the statement is denied.

4. Admit that the only GOYOGO formative mark that Applicant are [sic] actually using on or in conjunction with the offer or sale of any Services within the United States is the

stylized mark  .

RESPONSE: GoYoGo Frozen Yogurt objects to the term “GOYOGO formative mark” as vague and ambiguous and the term “Services” as unintelligible. Subject to objections raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term “GOYOGO formative mark” as vague and ambiguous. Based on the definitions subsequently provided by counsel for Goya, subject to objections raised, and as understood by Applicant denied.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya, which now delete the words “GOYOGO formative,” the statement is denied.

5. Admit that the flavors of yogurt offered by Applicant include coffee flavored yogurt.

RESPONSE: Denied.

6. Admit that the flavors of yogurt offered by Applicant include fruit flavored yogurt.

RESPONSE: Denied.

7. Admit that the flavors of yogurt offered by Applicant include coconut flavored yogurt.

RESPONSE: Denied.

8. Admit that the flavors of yogurt offered by Applicant include chocolate flavored yogurt.

RESPONSE: Denied.

9. Admit that the flavors of yogurt offered by Applicant include cookie flavored yogurt.

RESPONSE: Denied.

10. Admit that the flavors of yogurt offered by Applicant include banana flavored yogurt.

RESPONSE: Denied.

11. Admit that the flavors of yogurt offered by Applicant include apple flavored yogurt.

RESPONSE: Denied.

12. Admit that the flavors of yogurt offered by Applicant include nut flavored yogurt.

RESPONSE: Denied.

13. Admit that the flavors of yogurt offered by Applicant include honey flavored yogurt.

RESPONSE: Denied.

14. Admit that certain of the yogurt offered by Applicant are made with extracts used as flavoring.

RESPONSE: Denied.

15. Admit that certain of the yogurt offered by Applicant are made with flavoring syrup.

RESPONSE: Denied.

16. Admit that the yogurt offered by Applicant is made in part from milk.

RESPONSE: Denied.

17. Admit that yogurt and milk are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

18. Admit that yogurt and flan are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

THIRD AMENDED RESPONSE: As modified by the Board’s October 26, 2015 ruling amending “yogurt” to mean “frozen yogurt,” and as “flan” is further defined by Goya Foods in its May 27, 2015 letter, the request to admit is denied.

19. Admit that yogurt and milk are related.

RESPONSE: GoYoGo Frozen Yogurt objects to request as duplicative; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

THIRD AMENDED RESPONSE: As modified by the Board’s October 26, 2015 ruling amending “yogurt” to mean “frozen yogurt,” and as “milk” is further defined by Goya Foods in its May 27, 2015 letter, the request to admit is denied.

20. Admit that yogurt and custard are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

THIRD AMENDED RESPONSE: As modified by the Board’s October

26, 2015 ruling amending “yogurt” to mean “frozen yogurt,” and as “custard” is further defined by Goya Foods in its May 27, 2015 letter, the request to admit is denied.

21. Admit that yogurt and flavored, sweetened gelatin desserts are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

THIRD AMENDED RESPONSE: As modified by the Board’s October 26, 2015 ruling amending “yogurt” to mean “frozen yogurt,” and as “sweetened gelatin desserts” is further defined by Goya Foods in its May 27, 2015 letter, the request to admit is denied.

22. Admit that yogurt and fruit beverages are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms “related” and “fruit beverages” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

THIRD AMENDED RESPONSE: As modified by the Board’s October 26, 2015 ruling amending “yogurt” to mean “frozen yogurt,” and as “fruit beverages” is further defined by Goya Foods in its May 27, 2015 letter, the request to admit is denied.

23. Admit that yogurt and frozen confections are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms “related” and “frozen confections” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

THIRD AMENDED RESPONSE: As modified by the Board’s October 26, 2015 ruling amending “yogurt” to mean “frozen yogurt,” and as “frozen confections” is further defined by Goya Foods in its May 27, 2015 letter, the request to admit is denied.

24. Admit that the topping for the yogurt offered by Applicant includes processed fruit.

RESPONSE: Denied.

25. Admit that the topping for the yogurt offered by Applicant includes processed nuts.

RESPONSE: Denied.

26. Admit that the topping for the yogurt offered by Applicant includes processed edible seeds.

RESPONSE: Denied.

27. Admit that the topping for the yogurt offered by Applicant includes honey.

RESPONSE: Denied.

28. Admit that the topping for the yogurt offered by Applicant includes coconut.

RESPONSE: Denied.

29. Admit that the topping for the yogurt offered by Applicant includes chocolate .

RESPONSE: Denied.

30. Admit that the topping for the yogurt offered by Applicant includes cocoa.

RESPONSE: Denied.

31. Admit that the topping for the yogurt offered by Applicant includes coffee.

RESPONSE: Denied.

32. Admit that the topping for the yogurt offered by Applicant includes cookies.


RESPONSE: Denied.

33. Admit that the topping for the yogurt offered by Applicant includes flavoring syrup.

RESPONSE: Denied.


34. Admit that the topping for the yogurt offered by Applicant includes raisins.

RESPONSE: Denied.


35. Admit that the Services offered or sold under the  Mark are capable of being offered and sold to consumers in restaurants.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms “consumers” and “restaurants” as vague, ambiguous and undefined; objects to the term “Services” as unintelligible; objects to the request as an improper use of requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the objections raised, Applicant is unable respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of a request to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence. Based on the definitions subsequently provided by counsel for Goya, subject to the objections raised, Applicant admits that frozen yogurt can be sold in restaurants.


36. Admit that the Services offered or sold under the  Mark are capable of being offered and sold to consumers in grocery stores.

RESPONSE: GoYoGo Frozen Yogurt objects to the term “grocery stores” as vague, ambiguous and undefined. Based on the definitions subsequently provided by counsel for Goya, subject to the objections raised, Applicant admits that frozen yogurt can be sold to consumers in grocery stores.

37. Admit that the Services offered or sold under the  Mark are intended to be requested orally by potential purchasers.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects to the term “intended to be requested orally by potential customers” is vague, ambiguous and undefined; and objects to the term “Services” as unintelligible. Subject to the objections raised and as understood by Applicant, the request is denied.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term “intended to be requested orally by potential customers” as vague, ambiguous and undefined. Subject to the objection raised and as understood by Applicant, the request is denied.


38. Admit that the applications being opposed places no limitations on the retail price or intended retail price at which  Services can be offered or sold to U.S. consumers.

RESPONSE: GoYoGo Frozen Yogurt objects to the term “U.S. consumers” as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request; and objects to the term “Services” as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.

39. Admit that Applicant's application for unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION imposes no limitations or restrictions on the way the term unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION can be depicted.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms “unstylized word mark” and “on the way” as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects on the ground that it is a compound request. Subject to the objections raised, Applicant is unable to respond.


40. Admit that the applications being opposed place no limitations or restrictions on the class of customer to whom Applicant can offer sell  Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the “class of customer” as vague, ambiguous and undefined; objects to the request as an improper use of the

requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request and objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.


41. Admit that the applications being opposed place no limitations or restrictions on

the channels of trade through which Applicant can promote or offer  Services to U.S. consumers.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms "channels of trade" and "U.S. consumers" as vague, ambiguous and undefined and objects to the term "Services" as unintelligible. Subject to the objections the Application is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.

42. Admit that the applications being opposed places no limitations or restrictions on the

retail price or intended retail price at which Applicant can sell  Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.

43. Admit that Applicant has no knowledge of any third-party other than

Opposer that uses the term GOYA in U.S. commerce in connection with the sale of foods.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "sale of foods" as vague, ambiguous and undefined. Subject to the objection raised, Applicant is unable to reasonably respond as discovery has only begun.

AMENDED RESPONSE: Admitted.

44. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYO, in whole or in part in U.S. commerce in connection with the sale of foods.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as it is not likely to lead to the discovery of admissible evidence and objects to the term “GOYO” as not relevant to this action; objects to the term “sale of foods” as vague, ambiguous and undefined. Subject to the objections raised and as understood by Applicant, the request is denied.

45. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of beverages.

RESPONSE: Admitted.

46. Admit that Applicant knew of one or more of Opposer's Marks before adopting or applying to register the marks being opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of requests to admit as it refers to “one or more of Opposer’s marks”; and objects on the ground that it is unclear how a corporation can know of a mark. Subject to the objection raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of requests to admit as it refers to “one or more of Opposer’s marks”; and objects on the ground that it is unclear how a corporation can know of a mark. Subject to the objections raised, and as understood by Applicant, admitted that GoYoGo Frozen Yogurt admits that it was aware of one or more of Opposer’s marks prior to applying to register.

47. Admit that Opposer's registrations identified in the notice of opposition as being incontestable are incontestable as that term is defined in 15 U.S.C. §1065.

RESPONSE: GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of a request to admit as it a compound

statement. Subject to the objection raised, as discovery has only begun, Applicant is unable to reasonably respond.

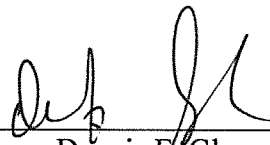
AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the request as not likely to lead to admissible evidence as incontestability of Opposer's marks is not a consideration in the opposition proceeding. Subject to the objection, GoYoGo denies the following:

"SI ES GOYA TIENE QUE SER BUENO" Registration No. 4210054

"GOYA" Registration No. 3825092

"GOYA" Registration No. 1283430

November ³⁰~~2~~, 2015

By: 
Dennis F. Gleason

JARDIM, MEISNER & SUSSER, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Attorneys for Applicant
GoYoGo Frozen Yogurt LLC

CERTIFICATE OF SERVICE

I, Dennis F. Gleason, certify that on November __, 2015, a copy of the third amended response of applicant to first set of interrogatories was served by first class mail on:

Jason DeFrancesco, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869

Dennis F. Gleason

Exhibit B

Jason L. DeFrancesco

From: Jason L. DeFrancesco
Sent: Friday, December 11, 2015 6:10 PM
To: dgleason@jmslawyers.com
Cc: Steve Baker; K. Hnasko
Subject: FW: Goya Foods, Inc. v. GoYoGo Yogurt LLC
Attachments: defic_ltr_Gleason_5-26-15.pdf

Dear Dennis,

I received your third amended discovery responses pursuant to the Board's order. As you know, you were directed to answer admission request nos. 18-23. While you attempted to provide an amended response, I take issue with the response you have provided. In particular, you condition your amended responses to 18-23 based on terms being "further defined by Goya Foods in its May 27, 2015 letter."

The problem with this response is that first off, you did not raise any definition provided by Goya in its May 27, 2015 letter when you opposed the motion testing the sufficiency of your admissions; second, the Board did not approve of a response conditioned on the May 27, 2015 letter; and finally, even if the Board did approve your conditioned response, there has been no terms "further defined by Goya in its May 27, 2015 letter." Attached is a copy of the May 27, 2015 letter.

So, unless you can correct my understanding, you are requested to again amend the response – now for a fourth time – removing from the response the condition that there was any term "further defined by Goya Foods in its May 27, 2015 letter." Please provide your compliance by Wednesday December 16, 2015 (or otherwise please explain to me how my understanding is incorrect) otherwise we shall merely seek that the Board order the requests to be deemed admitted.

Regards,
Jason

From: Jason L. DeFrancesco
Sent: Wednesday, May 27, 2015 4:21 PM
To: 'Roseanne Glaser'
Cc: Dennis Gleason; K. Hnasko
Subject: RE: Goya Foods, Inc. v. GoYoGo Yogurt LLC

Dear Mr. Gleason,

Please see attached letter.

Thank you,

Jason



Jason DeFrancesco, Esq.
575 Route 28, Ste 102
Raritan, New Jersey 08869
(908) 722-5640
<http://www.tmlawworldwide.com/>

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JASON DEFRANCESCO, ESQ.
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RARITAN, NJ 08869
(908) 722-5640
JLD@BR-TMLAW.COM

May 27, 2015

VIA E-MAIL and U.S. MAIL

Dennis F. Gleason, Esq.
dgleason@jmslawyers.com
Jardim, Meisner & Susser, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Re: Goya Foods, Inc. v. GoYoGo Frozen Yogurt, LLC.

Dear Mr. Gleason:

With regards to outstanding Request for Admissions, it is again requested that you amend Applicant's responses to nos. 18, 19, 20, 21, 22 and 23. The requests are all straightforward and merely seek your client admit that certain, specific goods are related to goods your client deals in.

In particular, Request Nos. 18, 19, 20 and 21 seek Applicant,

- 18. Admit that yogurt and flan are related.
- 19. Admit that yogurt and milk are related.
- 20. Admit that yogurt and custard are related.
- 21. Admit that yogurt and flavored, sweetened gelatin desserts are related.

In response, Applicant evades answering the request based on its objection to the term "related."

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

When using the term "related" in trademark matters, it is commonly understood to mean of a type which may emanate from a single source and logically related to the basic substantive issues in the case. See for e.g., *Slim N' Trim, Inc. v. Mehadrin Dairy Corp.*, 2000 TTAB LEXIS 777 (TTAB 2000) ("...yogurt and non-fat milk are closely related products and that customers would be likely to assume that both products emanate from a single source, if a similar mark is used thereon.") Accordingly, the allegation that your client lacks ability to respond to these requests is rejected.

In response to Request Nos. 22 and 23, in addition to objecting to "related," Applicant further alleges a lack of ability to answer if certain, specific goods – *all of which are identified in the Trademark ID manual* – are related to yogurt.

Dennis F. Gleason, Esq.

May 27, 2015

Page 2

For example, Request No. 22 seeks Applicant,

22. Admit that yogurt and fruit beverages are related.

032	Fruit beverages	A	01 Oct 05	G	N
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In response to Request No. 22, Applicant is unable to answer based on the term “fruit beverages.”

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms "related" and "fruit beverages" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

And, Request No. 23 seeks Applicant,

23. Admit that yogurt and frozen confections are related.

030	Frozen confections	A	02 Apr 91	G	N
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In response to Request No. 23, Applicant is unable to answer based on the term “frozen confections.”

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms "related" and "frozen confections" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

While we have already urged you by phone and by letter to supplement your answers, you and or your client still refuse to do so. Although it would seem we exhausted efforts to get Applicant to cooperate, we again make this good-faith attempt. Please let us know if your client will reconsider responding, and if so, when we can expect same.

If your client does not relent, we shall move to test sufficiency of its responses and in doing so highlight to the Board that Applicant lacks ability to understand goods it alleges to trade in and refuses to answer admission particularly when,

- “frozen confections” are identified in the Trademark ID manual (IC 030)
- “fruit beverages” are identified in the Trademark ID manual (IC 032)
- “related” is a common term used in trademark law.

Based on my count, this is at least the third time we have requested your cooperation. The fourth time will be to the Board. Please let us know your client’s intentions.

Very truly yours,
Baker and Rannells, P.A.



Jason DeFrancesco